

FILED

SUPREME COURT OF THE UNITED STATES

No. 534

WATERMAN STEAMSHIP CORPORATION, PETITIONER,
PAN AMERICAN STEAMSHIP AGENCY LTD., BRANCH
INC. and S. H. CAMPBELL MARINE ENGINEERS,

PAN AMERICAN TRADE & CREDIT CORPORATION
and SAMAN HMOB

PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

EDWARD J. BARNETT, CAY.

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Counsel for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 584

WATERMAN STEAMSHIP CORPORATION, WATER-
MAN STEAMSHIP AGENCY, LTD., GRACE LINE,
INC. AND S. S. CAMPFIRE, HER ENGINES, ETC.,
Petitioners,

vs.

PAN AMERICAN TRADE & CREDIT CORPORATION
AND SAMAN HNOS

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.**

Waterman Steamship Corporation, Waterman Steamship Agency, Ltd., Grace Line, Inc. and S. S. Campfire, her engines, etc. pray that a writ of certiorari be issued to review a judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled case on July 12, 1946, which affirmed a judgment of the District Court for the Southern District of New York.

This is a case of first impression, there being no decision in the United States or any other country deciding the problem here presented.

The facts were stipulated in the District Court (R. 16, 17 and 18) for the purpose of testing for the first time whether the pro-rata provisions of Clause No. 17 of the bill of lading used by all American carriers in foreign commerce since 1937 are against public policy and in conflict with the Congressional intent expressed in the Carriage of Goods by Sea Act (46 U. S. C. 1304 (5), *et seq.*)

Since the enactment of the statute in 1936 cargo worth billions of dollars has moved in foreign commerce under bills of lading which uniformly have contained the Clause No. 17 which is involved in this case. The matter here presented affects the Marine Industry of the United States. Hundreds of cases are being held in abeyance by underwriters, carriers and shippers pending the final determination of this case which is recognized as the test case to settle the problem.

Opinions

The District Court in a written opinion held that Clause 17 of the bill of lading was illegal, null and void and in contravention of sub. 5 of Sec. 1304 of the Carriage of Goods by Sea Act (R. 20-31). Judgment was entered for libelants for the stipulated sum. The opinion is reported in 64 Fed. Supp. 179.

The opinion of the Circuit Court of Appeals for the Second Circuit affirming said judgment is as yet unreported but may be found in R. 38-42.

Jurisdiction

The jurisdiction of this Court is invoked under the provisions of Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statute Involved

The United States Carriage of Goods by Sea Act, Title 46, U. S. C. A., Sec. 1304, par. 5, *et seq.*

Summary Statement of the Matter Involved

After the libel had been filed and the libelants filed exceptions to the respondents' answer, setting forth the provisions of Clause No. 17 as a defense, all interested parties stipulated the facts so that the District Court might render final judgment (R. 16-18). It was agreed that on July 8th, 1943, at New York, the libelants delivered to the respondents (here the petitioners) as common carriers, among other things, two cases of rayon goods in good order and condition to be carried to Guayaquil by the S. S. Campfire (R. 16). Although the shipper did not declare the actual value, the goods contained in one of the cases were of a value of \$1,619.47 as stipulated. When discharged from the vessel at destination the case was short nine pieces of rayon having a value of \$676.94 (R. 17).

It was admitted that the bill of lading was in the form required by the War Shipping Administration to be used by all agents of the United States of America (War Shipping Administration) in accordance with General Order 16 of July 6, 1942, as amended (R. 17) and that at all times since the effective date of the Carriage of Goods by Sea Act, all bills of lading issued by American Carriers for shipments in Foreign Commerce have contained proration clauses substantially the same as Clause 17 of the bill of lading under which libelants' goods moved (R. 17).

The libelants conceded that they could recover no more than \$500.00 because of the statute while the respondents contended that their liability was only \$209.00 (41.8% of \$500.00) (R. 17-18), because of the pro rating clause (No. 17) in the bill of lading. By the provisions of the bill of lading if the shipper had declared the actual value to be \$1,619.47 and such value had been inserted in the bill of lading and extra freight in the amount of 2½% ad valorem

paid, there would be no question that the libelants could have recovered their full loss (R. 19).

Clause No. 17 of the bill of lading is as follows:

"17. In case of any loss or damage to or in connection with goods exceeding in actual value \$500 lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be \$500 per package or per unit, on which basis the freight is adjusted and the Carrier's liability, if any, shall be determined on the basis of a value of \$500 per package or per customary freight unit, or pro rata in case of partial loss or damage, unless the nature of the goods and a valuation higher than \$500 shall have been declared in writing by the shipper upon delivery to the Carrier and inserted in this bill of lading and extra freight paid if required and in such case if the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value" (R. 9).

The District Court held and the Circuit Court of Appeals has affirmed, that Clause No. 17 is not enforceable as the contract of the parties and is illegal, null and void under the provisions of Title 46, U. S. C. A., Section 1304, par. 5, which section is as follows:

"(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before

shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed; Provided, that such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading."

Question Presented by This Petition

The sole question presented for determination here is whether the pro-rata provisions of Clause No. 17 of the bill of lading are valid and enforceable as a contract between the parties or whether they are prohibited by the provisions of Title 46, U. S. C. A. 1304, par. 5 *et seq.*

POINT I

It Was Not the Intention of Congress in Passing Carriage of Goods by Sea Act to Prohibit Pro-Rata Clauses

The Act was not designed to regulate all clauses contained in bills of lading, as they have existed for generations as a matter of common business practice. It was designed to define certain relationships between carriers and shippers only to the extent that there was complete agreement between these conflicting interests. As to those subjects, such as Both-to-Blame clauses and pro rata clauses, concerning which there was not complete agreement among the divergent interests which sponsored the legislation, the

Act is silent, and leaves unaffected the commercial usage theretofore sanctioned by the courts.

Congress was well aware that prior to the enactment of the Carriage of Goods by Sea Act in 1936, pro rata clauses in bills of lading were perfectly valid and did not operate as an unlawful limitation of liability where the shipper was offered the opportunity to declare the real value of the cargo and pay a small additional rate. Such pro rata clauses frequently came before the District Courts and were uniformly upheld. *Bingham & Co. v. Osaka*, 1935 A. M. C. 1103 and *Olivier Straw Goods Corp. v. Osaka*, 4 F. (2d) 717. -42

The District Court and the Circuit Court have approached the problem on the premise that what the statute does not specifically permit, it prohibits, but the background of this statute clearly indicates that neither the Hague Rules (the forerunner of the American Act) nor the Carriage of Goods by Sea Act was designed to cover the entire relationship between carriers and shippers.

In short, the Act was never intended to be a code of affreightment and consequently it is not legally sound to argue, as the Courts below did, that "if Congress had wished to permit the pro rating of a partial loss it could have done so in a paragraph, in the manner provided in Clause 17 of the bill of lading."

From the time when the first draft was penned in 1921 until 1936 when the Act was enacted, all of those who were conversant with the matter knew that the "international code" would have to be a limited agreement covering only those matters to which it specifically referred and forming a general norm or pattern, after which the individual nations could fashion their individual laws, with such modifications as might be deemed proper to meet the conditions peculiar to each nation. The object was to achieve substantial uniformity in *some fundamentals*, not to legislate *all details* embracing the whole relationship

between shippers and ocean carriers. In the United States it took fifteen years to reach substantial unanimity on merely those matters contained in the Act. Any more ambitious design would have resulted in complete disagreement with endless and fruitless debate.

The necessary limitations of the "code" were recognized at its birth. There was presented at the Conference of the International Law Association, held at London, England, May 17-20, 1921, the draft of what became, with modifications, the Hague Rules.

In the report of the Maritime Law Committee on Bills of Lading presented to that Conference was the statement at page 11:

"It must be borne in mind that the Harter Act and the Dominion statutes proceed upon the basis of a pre-existing code of liability such as in England and countries which recognize the Common Law is founded upon the provisions of the Common Law.

The international code, however, would not assume the pre-existence of Common Law liabilities, and *would be based upon enacted liabilities and enacted immunities.*

In order to be in a situation to deal with this matter at the Hague Conference, the Committee decided to take steps to obtain the embodiment in a draft code of regulations of such provisions as would in their view give international effect to the *main intentions* of the statutes in question." (Italics supplied.)

The Hague Rules were amended in many respects at the London conference of October 9-11, 1922 and these amendments were necessary only because it was recognized that the rules did not prohibit everything which they did not permit.

Then, again, the necessary limitations on the scope of the Rules were recognized by the delegates of the United States to the International Conference on Maritime Law held at

Brussels, Belgium, October 17-26, 1922. In their report to the President of the United States, dated December 20, 1922, at page 23 thereof:

“We are agreed that the *projet* is not and does not pretend to be a code of affreightment. It is but a set of rules designed to improve and unify bills of lading regarded as the instruments or means of credit.”

Mr. D. Roger Englar, representing cargo interests, recognized the fact the proposed Act was not all inclusive when at the hearing before the Senate Committee on May 10, 1935, he tried to outlaw the Both to Blame Collision Clause. (See minutes, pp. 51-59.)

Then, Senate Report (No. 742, 74th Congress, 1st Session) which accompanied S. 1152, recognized the limited scope of the Hague Rules, when it was said, at page 4:

“The bill brings the American statute law as to ocean bills of lading into *general accord* with the Brussels convention, *with certain amendments and additional clauses required to adapt the convention to American conditions*. It also will accomplish real uniformity and agreement with many other nations *as to the text of those clauses of ocean bills of lading with which the bill deals*.” (Emphasis supplied.)

Finally, our own Carriage of Goods by Sea Act contains within its very terms numerous exceptions showing conclusively that the Act was obviously not designed to be all inclusive. Section 1(e) of the Act, 46 U. S. Code 1301, provides:

“The term ‘carriage of goods’ covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.”

In short, this means from tackle to tackle. Previous to the actual loading of the cargo and subsequent to the dis-

charge, the relation of shipper and carrier is covered in part by the Harter Act of 1893 (46 U. S. C. 190-195) under which pro rata clauses are admittedly valid. This distinction is expressly reserved in subsequent provisions in the Carriage of Goods by Sea Act, specifically in 46 U. S. C. 1307 and 1311. By virtue of 46 U. S. C. 1308 the Carriage of Goods by Sea Act leaves unaffected the limitation of liability statutes contained in 46 U. S. C. 181-189 and 46 U. S. C. 801. The provisions of the Shipping Act of 1916, 46 U. S. C. 801, also are reserved in 46 U. S. C. 1309. The Interstate Commerce Act was kept in effect despite the Carriage of Goods by Sea Act, by the provisions of 46 U. S. C. 25. So, too, the Federal Bills of Lading Act of 1916, 49 U. S. C. 81-124, commonly known as the Pomerene Act, is effective. [See express reservation in 46 U. S. Code 1303 (4)].

When one realizes the vast number of problems presented in the carriage of goods by sea, it should be immediately apparent that neither the provisions of the Hague Rules nor of the Act could sensibly extend beyond their exact terms and hope to cover this whole phase of admiralty law. If the Carriage of Goods by Sea Act prohibits everything which it does not specifically allow, then no carrier may insert in bills of lading reasonable clauses covering the forwarding of shut-out goods, clauses protecting the carriers' lien for unpaid freight, Both to Blame collision clauses, provisions for excessively heavy single pieces or packages, provisions for transshipping and forwarding, provisions for lighterage where necessary, general port clauses, provisions concerning cooping, mending, etc.

In judging of Congressional intent concerning pro rating clauses (as to which the Act is silent), the Circuit Court of Appeals referred to certain unpublished opinions of three leading members of the admiralty bar, expressed before

the Shipping Board in September, 1922, about fourteen years before Congress enacted the law (Appellees' brief, pp. 10-13). These three proctors were the late Charles G. Haight, Esq., Roscoe H. Hupper, Esq., and Ira A. Campbell, Esq. of the firm of Kirlin, Campbell, Hickox & Keating.

It should be sufficient answer to say that if these gentlemen held those unpublished opinions before the Brussels conference (October 17-26, 1922), they certainly abandoned such opinions during the next decade and a half. The essentials of the bill of lading before this Court in this case were drawn by Messrs. Haight, Hupper, Cletus Keating (one of Mr. Campbell's partners) and George deForest Lord.

At the Associated North Atlantic Freight Conference held on March 10, 1937, the Committee, composed of these four proctors recommended a uniform bill of lading which was approved by the Conference, put into general use on September 1, 1937 and used ever since. (Knauth on Ocean Bills of Lading [1941 Edition] p. 81; Record, fol. 51). The bill of lading which these gentlemen prepared contains as Clause 17, the very Clause 17 involved in this present controversy, and which, of course, contains provisions for pro rating partial loss on an agreed value of \$500.00 per package. (Knauth on Ocean Bills of Lading [1941 Edition] pp. 89-90.)

In the Circuit Court of Appeals, Mr. Campbell's firm filed a brief as *amicus curiae* in support of the Appellants' (here petitioners') position.

The petitioners have maintained throughout that Section 1304 (5) was designed merely to prevent a stipulated value for cargo in an arbitrary amount and that the only change effected in such common commercial clauses as Clause 17 was the requirement that \$500.00 be the agreed Value, instead of \$100.00 or a small amount of yen or 10 francs. This contention is supported by the actual pub-

lished opinion of Mr. Haight found at Page 4 of the Hearings Before the Committee on the Merchant Marine and Fisheries, House of Representatives, 68th Congress, Second Session, January 28, and 29, 1925 (after the Hague Conference, which was attended by representatives of American interests).

In further support of Mr. Haight's actual opinion that the \$500.00 provision was not to prohibit pro rating, but was a valuation clause to stop the practice of placing a nominal value on goods for which no value had been declared, we refer to the hearings before the Committee on the Merchant Marine and Fisheries, House of Representatives, 74th Congress, Second Session, January 28, 1936. The bills of lading there submitted contained pro rata clauses and no criticism of them was offered.

In the last analysis, the Circuit Court's reference to unpublished opinions voiced before the Shipping Board in 1922 should not be permitted to obscure the actual reports of the two Congressional committees. The Senate Report (No. 742, 74th Congress, 1st Session) in favor of the proposed bill, S. 1152, made no reference whatever to either pro rating or the scope of the \$500.00 provision. The report of the House Committee directly supports the petitioners' contention that the purpose of this section of the Act was merely to require carriers to insert \$500.00 as the stipulated value of a package in place of the nominal value frequently inserted in customary pro rating clauses of bills of lading. The report of the Committee on Merchant Marine and Fisheries (No. 2218, 74th Congress, 2nd Session) approving the bill, contained two sentences bearing directly on the problem before the Court. At page 8 the report is the following:

"Valuation clauses in bills of lading frequently restrict the recovery of the cargo owner to an agreed

valuation as low as \$100. This bill increases that limit to \$500 per package or customary freight unit."

Thus clearly and succinctly did the House Committee state exactly the theory urged by the petitioners from the beginning where in their original brief at page 12, it was said:

"Under the statute, therefore, it is permissible for the carrier and the shipper to agree upon the value of the unit so long as such value is not less than \$500.00 if the shipment is actually worth more than that amount. Clause 17 was drawn in exact compliance with the section. The American carriers by their use of bills of lading containing Clause No. 17 have adopted a true valuation clause in the light of the statute and have carried into effect the \$500 limitation of liability therein contained. The situation thus arising is exactly the same as those arising in such cases as *Bigham & Co. v. Osaka*, 1935 A. M. C. 1103 (S. D. N. Y.) (Bondy, D. J.), *Olivier Straw Goods Corp. v. Osaka*, 14 F. (2d) 717 (S. D. N. Y.) (Knox, D. J.), *Olivier Straw Goods Corp. v. Osaka*, 44 F. (2d) 717 (S. D. N. Y.) (Mack, D. J.) with one important exception, namely, the stipulated value can no longer be either a small amount of yen or one pound sterling or \$5 in American money. This was the evil to be corrected, and it has been corrected by the insertion in Clause 17 of the five hundred dollar figure, the limit of liability provided in the Act."

POINT II

The Decision of the Lower Courts Puts American Carriers at a Disadvantage in World Trade

The District and Circuit Courts have advanced as one ground for declaring that Clause 17 is in conflict with the provisions of the Carriage of Goods by Sea Act that uniformity and agreement with many other nations as to the text of those clauses of ocean bills of lading with which the Act deals would not be accomplished.

Theoretical and complete uniformity could never be achieved. Our American carriers are at an obvious disadvantage compared with British carriers in some trades merely by virtue of the rate of exchange. The limit of agreed value under the British Act is 100 pounds sterling. This is only about \$404.00 in American money compared with the \$500.00 provision applicable under our Carriage of Goods by Sea Act. This variation is found throughout the world in varying degrees.

But to the extent that there is uniformity established by foreign carriers on such matters as pro rating, the American carriers should not be placed at a further competitive disadvantage by this Court's condemnation of the same clause in American bills of lading. The parties to this suit submitted certain bills of lading for consideration by the District Court, which referred to the situation erroneously in its opinion (fol. 90). The Petitioners submitted bills of lading issued by:

(1) Cunard White Star Limited (Voyage including New York, Halifax, London, Cobh, Plymouth, Southampton, Cherbourg and Havre).

(2) Norwegian-American Line (Voyage including east coast of North America and Norwegian ports).

(3) Compagnie Generale Transatlantique (voyage unspecified).

(4) Holland-American Line (voyage between all United States ports and Holland and Belgium via channel ports).

(5) Swedish-American Line (voyage from east coast of North America to Sweden, Finland and the Baltic).

(6) Canadian National Steamships Limited (voyage including *Eastern Canada and United States-Bermuda, West Indies, Bahamas, British Guiana and British Honduras*).

All of the aforementioned bills of lading contain pro rata clauses. The District Court thought that the prevailing practice was that on "shipments from foreign ports to the United States the bill of lading issued does not contain a pro rating clause" (fol. 90). Among other things, the Court completely ignored the bill of lading of the Canadian National Steamship Limited which was issued "subject to the provisions of the Water Carriage of Goods Act, 1936 of the Dominion of Canada" and does apply, by its very terms to cargo carried from Canada to the United States. The Canadian Act (1 Edw. 8 ch. 49) contains the Hague Rules practically *verbatim* and this is especially true of Article IV (5). The degree of uniformity sought to be attained by the District Court is actually destroyed and American carriers are put at a further competitive disadvantage, specifically in connection with shipments between the United States and Canada, if this Court approves the invalidation of the *pro rata* provisions of American bills of lading with full knowledge that the same type of clause is contained in bills of lading issued by Canadian carriers covering shipments from Canada to the United States.

The Courts below have ignored the fact that by its terms the bill of lading used by the French Line is used not only in the United States but also for shipments originating in Canada destined for France. (It should be noted that the French Line uses the figure \$250.00, thus taking competitive advantage of French Law which fixed the equivalent of 100 pounds sterling at 8,000 French francs when France enacted the Hague Rules in 1936. For at least eight years 8,000 francs have not been the commercial equivalent of 100 pounds sterling or \$500 in American currency. Today the French franc has been so devalued that 8,000 francs are worth about \$68.00 in American money.

This is the actual obligation today of French carriers under the "uniform" Hague rules!).

The Petitioners ask this Court to grant certiorari to determine whether public policy requires American carriers to be placed at the competitive disadvantage resulting from the decisions in the Courts below.

POINT III

The Interpretation by the Circuit Court of Appeals That Section 1303, Par. 8 of the Carriage of Goods by Sea Act Prohibits Clause 17 of the Bill of Lading Is Incorrect.

The lower Courts have held that Article III (8) of the Brussels Convention and 46 U. S. C. 1303 (8) do not mean exactly what they say. The foregoing provision of the Carriage of Goods by Sea Act is as follows:

"(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, *arising from negligence, fault, or failure in the duties and obligations provided in this section*, or lessening *such* liability otherwise than as provided in this Act, shall be null and void and of no effect."
(Emphasis supplied.)

The key to this statutory provision is to be found in the one word "section". (The language of Article III (8) of the Brussels Convention is similarly limited by the use of the word "article".) Section 1303 is without question the most important section of all those contained in the Carriage of Goods by Sea Act from the standpoint of all persons who are interested in the carriage of goods by sea. In this section there are imposed upon carriers the following fundamental obligations:

(1) to use diligence to make the ship seaworthy; properly to man, equip and supply the ship; make the parts of the

ship in which goods are carried safe for the reception, carriage and preservation of the goods; to load, stow and handle the goods properly; to carry, keep and care for and finally discharge the goods carefully;

(2) Upon receipt of the goods to issue a bill of lading showing certain matters specified in the statute;

(3) Under certain circumstances to issue a "shipped" bill of lading.

After establishing these basic responsibilities, Subdivision (8) provides that the carrier may not relieve itself from *those* liabilities. A pro rata clause is not and never has been considered to be one avoiding, lessening or affecting in any way the fundamental liability of a carrier or a ship for negligent carriage of goods.

A consideration of the nature of a pro rata clause would lead to the same conclusion without regard to adjudicated cases. They contain as an integral part a stipulation for the value of the goods. Taken in its entirety a pro rata clause simply says that we, the shipper and the carrier, have agreed upon a value for the goods. If the goods are entirely lost the shipper is to receive the full value, if they are partially lost or partially damaged the shipper is to receive the percentage of the loss or damage, e. g., if it is agreed that the value of the package is \$1,000 and if 10% of the package is damaged or lost \$100 will be paid; if 60% is lost or damaged \$600 will be paid.

There is nothing evil, inequitable or unconscionable in this practice which is so common in other fields as well as in the field of ocean carriage. Insurance contracts for valuable objects are a good example of the application of the fundamental rule in another field. Actually "pro rata" simply means "proportion" and this is the method used in every day affairs in arriving at damage based upon agreed value of the whole unit.

The true function of Sec. 1303, subdivision (8) of the Act, especially with reference to package valuation, is clearly stated in the Handbook of Admiralty Law in the United States by Gustavus H. Robinson, Professor of Law, Cornell Law School, at page 543, as follows:

“Although no contractual exemption from negligence is valid under the Harter Act, yet package limitations, at least, are valid, even in the case of losses due to negligence. The Carriage of Goods by Sea Act, section 3 (8), 46 U. S. C. A. § 1303 (8), is also explicit in providing that any attempted exemption from negligence is void and of no effect. But the package valuation as set by the act is available to the carrier in all cases.”

The only recognized authority in England or the United States who has written expressly on this point is Mr. Arnold Knauth who states in his work, *The American Law of Ocean Bills of Lading*, 1941 Edition, pg. 208:

“Such clauses (pro-rata) were valid under the Harter Act; and there is nothing to indicate that their validity has been in any way impaired by the Carriage of Goods by Sea Act.”

Conclusion

The decision below is incorrect. It decided a question of substantial general importance involving public policy in connection with the carriage of goods by sea under bills of lading and involving Congressional intention in the enactment of the Carriage of Goods by Sea Act. The decision is the first one in the world interpreting this phase of the Act and its counterpart, Article III (8) of the Brussels Convention. It has upset the uniform practices of the Marine Industry of the United States as they have been followed since 1937. The case has been recognized by all interests as a test case and the disposition of hundreds of

similar cases in which underwriters, carriers and shippers are interested, await the outcome of this case in this Court.

It is respectfully submitted that this petition for a writ of certiorari should be granted.

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Attorneys for Petitioners.

(7017)

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OCT 30 1946

CHARLES ELMORE CROFT
CLERK

Supreme Court of the United States

OCTOBER TERM, 1946

No. 584

**WATERMAN STEAMSHIP CORPORATION, WATERMAN STEAMSHIP
AGENCY, LTD., GRACE LINE, INC. and S. S. "CAMPFIRE,"
her engines, etc.,**

Petitioners,

VS.

**PAN-AM TRADE & CREDIT CORPORATION
and SAMAN HNOS,**

Respondents.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

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| <i>St. Johns N. F. Shipping Corporation, etc. v. S. A. Companhia Geral Commercial, etc.</i> , 263 U. S. 119, 125 | 10 |
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Statutes and Conventions Cited

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| <i>Brussels Convention</i> (1924) | 6, 7 |
| <i>Carriage of Goods by Sea Act</i> (Act of April 16, 1936, c. 229, 49 Stat. 1207, 46 USC §1300, et seq.) | 2, 3, 4, 10, 11, 14, 15 |
| <i>Cummins Amendment to the Interstate Commerce Act</i> , 49 USC 20 (11) | 5 |
| <i>Suits in Admiralty Act</i> (Act of March 9, 1920, C. 95, §1, 41 Stat. 525, 46 USC §741) | 2 |

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Supreme Court of the United States

OCTOBER TERM, 1946

WATERMAN STEAMSHIP CORPORATION,
WATERMAN STEAMSHIP AGENCY, LTD.,
GRACE LINE, INC. and S. S. "CAMPFIRE,"
her engines, etc.,

Petitioners,

vs.

PAN-AM TRADE & CREDIT CORPORATION
and SAMAN HNOS,

Respondents.

No. 584

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement.

It is noteworthy that the United States of America has not joined in this petition although it was a party respondent in both Courts below (R. 2), answered (R. 11) and took an appeal from the final decree entered in the District Court (R. 34). It filed a brief in the Circuit Court of Appeals separate from that of the other respondents below and its proctor argued the cause before that Court [156 F. (2d) 603, 604].

Libelants in the District Court obtained a final decree against the United States for specified damages (R. 32, 33), and the latter has not attempted to bring it before this Court for review. The judgment, therefore, is collectible from the United States without further delay. The recovery was for loss of cargo carried on the S. S. *Campfire*, a vessel owned by the United States (R. 8, 11), and it was therefore the actual carrier of the merchandise and the

party which properly should pay for the loss. In this situation, any question the petitioners might raise is moot.

The enumeration of the S. S. *Campfire*, her engines, etc., as one of the petitioners is incorrect and probably an inadvertence. She is not before this Court nor was she ever before the Courts below. Being owned by the United States, she was not subject to process *in rem* (*Suits in Admiralty Act*, Act of March 9, 1920, C. 95, §1, 41 Stat. 525, 46 U. S. C. §741); such process was therefore not issued; she was not claimed; no answer was filed on her behalf; and the final decree did not include her as a party against whom judgment was rendered.

The Opinions Below.

The suit came before the District Court on stipulated facts (R. 16-19), resulting in a decree in favor of respondent, and the Circuit Court of Appeals for the Second Circuit unanimously affirmed. The District Court's opinion is reported at 64 F. Supp. 179, and that of the Circuit Court of Appeals at 156 F. (2d) 603.

Summary Statement of the Matter Involved.

The suit involved admitted liability for the loss of part of the contents of one of two cases owned by respondents, shipped under a bill of lading (reproduced at R. 19) from New York to Guayaquil, Ecuador, on the S. S. *Campfire*. The loss amounted to \$674.94, equivalent to 41.8% of the full value of the shipment, viz. \$1,619.47. On a stipulation for judgment, both Courts below held the cargo owners were entitled to recover \$500, being the limit of liability provided for in § 4 (5) (quoted at R. 21, 22) of the *Carriage of Goods by Sea Act* (Act of April 16, 1936, c. 229, 49 Stat. 1207, 46 U. S. C. §1300, *et seq.*). Petitioners and the United States of America had contended that on the basis

of Clause 17 of the bill of lading (quoted at R. 20, 21), their liability was limited to \$209, being 41.8% of the \$500 statutory limit of liability.

The Question Involved.

The first paragraph of the opinion of the Circuit Court of Appeals correctly summarized the issue:

“This appeal presents the question whether the Carriage of Goods by Sea Act, 46 USCA §1300, *et seq.*, invalidates a bill of lading provision for pro-rating in case of the partial loss by the carrier of a package to which the statute ascribes a value of \$500.”

instead of that stated by petitioners who endeavor to limit the issue to whether it is only Section 4 (5) of the Act which bars application of the bill of lading clause. Section 3 (8) of the Act must be read in conjunction with Section 4 (5). They read:

3(8) “Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect.”

4(5) “Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if

embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

"By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Provided*, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained."

Both the District Court and the Circuit Court of Appeals rightly held the bill of lading clause would lessen, in violation of the prohibition in § 3 (8), the carrier's liability other than as authorized by the Act, namely, to \$500 a package as provided in § 4 (5), and was therefore invalid.

POINT I.

No principle is involved or issue presented requiring consideration by this Court.

(a) There is no conflict among the Circuits.

There is no decision directly on the point other than that of the Courts below. On the reason for this, the Circuit Court of Appeals said (pp. 604, 605):

"The appellants argue * * * that, although the carriers have persistently continued to incorporate the pro-rata clause in their bills of lading issued after enactment of the statute in 1936 no judicial decision, except the one at bar, has ever held the clause invalid. The point as to the carrier's practice and the absence of judicial authority, both here and in foreign countries whose legislation has adopted the Hague Rules is well answered by the appellee's statement that the many suits for partial losses have all been settled by the carriers in order to avoid the test. They say that the appellants will not question this statement, and in fact they have not in their reply briefs. * * *"

- (b) **No need exists for this Court to pass on the question; there being decisions of this Court stating principles which support the rulings in the Courts below, and none in conflict therewith.**

The closest approach in decisions of this Court to the issue in this case is found in *Chicago M. & St. P. Rwy. Co. v. McCaull-Dinsmore Company*, 253 U. S. 97. The principles enunciated in that case support the decision below.

The *Railway Company* case involved the interpretation of the clause in the *Cummins Amendment* of the *Interstate Commerce Act* which prohibits limitation of a carrier's liability below the basis therein stated, namely, the full actual loss [49 USC 20 (11)]. There is a pronounced similarity between the language of the *Cummins Amendment* and Section 3 (8) of the *Carriage of Goods by Sea Act*.

The Railway, in its bill of lading and tariffs, sought to limit its liability to market value at the point of origin. It argued that in so doing, it was not attempting to limit its liability, but merely to define it, and accordingly it was not unlawful to agree upon value at the point of origin as the measure of damages. In sustaining a judgment for the shipper, this Court, as did the Courts below, rejected the argument. The Circuit Court of Appeals said (260 Fed. 835, 837) that Congress intended by the legislation " * * to fully and finally prevent all limitations of this character * * ", and this Court, in condemning the clause, said (p. 100) it operated to " * * prevent a recovery of the full actual loss * * ".

- (c) **No issue of great public concern is involved.**

The question of pro-rating for a partial loss under a clause already limiting liability to \$500 a package is not of great public concern. It involves relatively few of the bulk of packages transported by water in foreign trade and then only while the goods are actually on board the vessel (§ 1, 13). Indicative of the lack of a question of

public concern and the apparent lack of faith of senior Government counsel in the propriety of or necessity for this petition is the failure of the United States of America to join in the petition and the fact that only two District Court decisions are cited by petitioners and they were decided on principles of common law before the enactment of the *Carriage of Goods by Sea Act*. In one of them—*Bingham & Co. v. Osaka*, 12 F. Supp. 35, 1935 A. M. C. 1103—the libel was dismissed, so that the comment at the end of the case about liability being limited to a proportionate amount is pure dictum. Furthermore, it relied on the other case cited by petitioners—*Olivier Straw Goods Corp. v. Osaka*, 42 F. (2d) 717, where the Court will note the question of apportioning damages for a partial loss was not involved and all the District Court did was to approve the particular form of valuation clause there in question.

POINT II.

The decisions of the Courts below conform absolutely to the intent of Congress and the terms of the Act.

The answers to petitioners' Points I and III are found in the proceedings before Congressional Committees and related hearings and in the plain language of the *Carriage of Goods by Sea Act*. They indubitably establish that it was intended the Act should prohibit *any* reduction by any device whatsoever—pro-rating included—in an ocean carrier's \$500 per package liability for *any* loss or damage.

The *Carriage of Goods by Sea Act* has its origin in and closely follows the *Hague Rules* of 1921 and 1922—a voluntary statement of principles by those engaged in international trade—thereafter incorporated in the *Brussels Convention* (1924) as to which the Senate gave its advice and consent on April 1, 1935 and which was signed by President

Roosevelt on April 17, 1936, the same day he signed the *Carriage of Goods by Sea Act*. Despite the implementation of the *Rules* in the *Convention*, American interests deemed it desirable that they be made a part of the statute law of the United States,—hence the passage of the Act.

It is important to note that of the two sections of the Act which are of consequence in this case, § 3 (8) is identical with the corresponding section of the *Convention* and § 4 (5) likewise is practically identical except that in the Act “\$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit,” are substituted for the words “100 pounds sterling per package or unit”.

By the time the Act (then known as S 1152) reached the stage where Congressional Committees were prepared to recommend its passage, there was absolutely no question as to what Section 4 (5) meant in the light of Section 3 (8). In favorably reporting S 1152, the Senate Committee on Commerce said of the Bill:

“• • • It will also accomplish real uniformity and agreement with many other nations as to the texts of those clauses of ocean bills of lading with which the Bill deals” (Senate Report No. 742—74th Congress, 1st Session, dated May 13, 1935, p. 4).

That report was submitted after all interests had been heard. At page 47 of the official minutes of the hearings there is recorded the undisputed statement in a carefully prepared exposition of the legislation accepted by the Committee that:

“Another beneficial and noteworthy provision of the Hague Rules is the stipulation which makes the carrier *liable* for loss or damage *up to £100 per package*, or unit, unless a greater value shall have been declared by the shipper and inserted in the bill of lading. This is important when we recall

that present limits are usually either \$100 or \$250; in fact, one instance is recorded of a limit of 10 francs. *In addition, no pro rating clause is contained in the Hague Rules, and the carrier must pay up to £100 per package and not a proportionate amount of the actual value*" (Italics supplied).

The House Committee on Merchant Marine and Fisheries in its favorable report on the bill under the heading "Purpose of Legislation", said:

"The purpose of this bill is to define by law the rights and liabilities of water carriers and shippers in foreign commerce. *It fixes the irreducible minimum of immunity of the carrier from liability*" (Italics supplied).

In the background of American adherence to the principles outlined in the *Hague Rules* are the public hearings thereon held by the United States Shipping Board on September 20 and 21, 1922 referred to in both the District Court and Circuit Court of Appeals opinions. The expression and agreement by counsel who regularly represent shipowners and of others at those hearings was so definite that pro-rating for partial losses was no longer permissible that the question was thereafter and up to and including passage of the Act treated as settled. The counsel expressing the shipowners' agreement that pro-rating was a thing of the past were Messrs. Charles S. Haight, then appearing as Chairman of the Bill of Lading Committee of the International Chamber of Commerce, Roscoe H. Hupper, for the Hague Rules Committee of the Maritime Law Association of the United States, and Ira A. Campbell, for the American Steamship Owners Association. Others heard were Mr. McComb of the Marine Office of America, Captain Berry, Chairman of the Shipping Board Bill of Lading Committee and Mr. Herrick of the Institute of American Meat Packers. Taken from the

minutes of the Shipping Board proceedings entitled "Hearings before a Committee of the United States Shipping Board for the Purpose of Considering Revision of Rules for the Carriage of Goods by Sea", their statements were:

"Mr. McComb (interposing): Section 5 of that. I think that might be made clearer. Mr. Haight, I believe it is your understanding that 100 pounds liability is up to 100 and does away with the pro rating clause?

"Mr. Haight: I understand that there is no pro rating under that.

• • • • •
 "Mr. Berry: Mr. McComb, have you no objection to any other portions of Section 5 of Article 4? Are you satisfied with the rest of the section?

Mr. McComb: If there is no pro rating, yes" (p. 40).

• • • • •
 "Mr. Herrick: The raising of the limit, as I understand it, does not mean the carrier agrees to pay \$500 for every package lost. I think that was the inference Mr. Campbell's remarks carried.

"Mr. Campbell: *To pay the value of the goods lost not to exceed \$500*" (Italics supplied) (pp. 115, 116).

"Mr. Haight: * * * Now, those complaints in America were aimed at three major propositions. The shipper said, 'It isn't fair to limit this liability to a nominal sum and then pro rate; to give a package worth \$500 and damage it \$25 and give a check for \$20' * * *.

"Those complaints have been voiced in this country, but they have been just as vociferous in other parts of the world" (p. 189).

"Mr. Haight: * * * Mr. McComb also suggested a 100 pound limitation without pro rating. *I understand under the rules you can't pro rate. I quite agree you ought not to be allowed to pro rate*" (Italics supplied) (p. 215).

“Mr. Hupper: * * * The next provision is Paragraph 5, the valuation clause. * * * The effect of that really is no valuation or limitation clause because most packages are under £100. Of course, there are some that are over. It is not unfair there should be some limitation. *Of course, our friends, the shippers, have accomplished in this clause, as it stands, what has long been their desire, to get away from the pro rating clause.* They were met not infrequently in the case where valuation was \$100 and the goods were worth \$1,000 and there was a damage of 50 per cent, and therefore they would get 50 per cent. *That was a sore spot and they have gotten away from that*” (Italics supplied) (p. 132).

With the foregoing in mind, it is instructive to note that in the legislative history of the Act there is not a single indication that anyone contended, or even thought, that pro rating had been preserved, or that anything less than actual damages with a ceiling of \$500 per package could be agreed upon.

But this Court need not rest a denial of the petition on the foregoing. The plain language of the Act is sufficient. It expressly forbids incorporation in a contract for ocean carriage of “*any clause, covenant, or agreement*” relieving the carrier from or *lessening* its liability “in connection with the goods * * * *otherwise than as provided in this Act*”. A pro rata clause is certainly “in connection with the goods” and as certainly represents a *lessening* of liability “otherwise than as provided in this Act”. At no place does the Act “provide” for a pro rata clause.

Section 4 (5) is the only section of the Act permitting a carrier to lessen its liability below the normal measure—the full amount at sound market value—(*Steamship Ansaldo San Giorgio I v. Rheinstrom Bros. Co.*, 294 U. S. 494, 496; *St. Johns N. F. Shipping Corporation, etc. v. S. A. Companhia Geral Commercial, etc.*, 263 U. S. 119, 125; *Steel Inventor*, 35 F. Supp. 986). It will be seen the

section neither makes nor infers nor contemplates a distinction between a partial and total loss. It uses a plain word in saying it covers any loss or damage. It thereby fixes a shipper's recovery for *any* loss, partial or whole, at the sum therein stated, i. e., the amount of damage actually sustained not exceeding \$500 a package unless an actual higher value is declared. *It specifically forbids an agreement fixing damages at less than \$500 for a package of greater value.* This limitation, of course, is of distinct advantage to the carrier. It is thereby able to calculate the limit of liability it could incur when it embarks on a voyage, namely \$500 per package. That would be the maximum. The carrier's liability would generally be less inasmuch as most packages are of a lower value than \$500.

Patently, petitioners' plea of freedom to contract for a pro rata provision flies in the face of the exact terms of the statute.

Petitioners seek to persuade this Court that Section 3 of the Act has no relation to the basis on which a cargo owner is to be compensated for losses chargeable to the carrier. Nothing could be further from the fact. Sub-division (2) says "The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried" and sub-division (8) forbids the carrier from contracting to relieve itself from liability for loss "*arising from negligence, fault, or failure in the duties and obligations* provided in this section, or lessening such liability otherwise than as provided in this Act". Clearly, then, the duty and obligation to "properly and carefully * * * keep, care for, and discharge the goods" imposed by sub-division (2) is one of the duties and obligations referred to in sub-division (8) because it is part of "this section" number 3.

The excerpt from Mr. Robinson's "Handbook of Admiralty Law in the United States" does not even suggest

pro rating clauses are valid. On the contrary, it points out the only thing permitted a carrier is to limit its liability to the statutory \$500 a package.

The statement quoted from Mr. Knauth's book was made with absolutely no authority to support it, and is the only one of that tenor to be published as a textwriter's view under the *Carriage of Goods by Sea Act*. Both Courts below had it before them and were unpersuaded thereby. Significantly, Mr. Knauth wrote the brief and argued the appeal for the Government in the Circuit Court of Appeals, yet the United States did not deem the statement to be so legally sound, or the issue so important, as to warrant joining in this petition.

The balance of the matters discussed in petitioners' Points I and III were brought up in the Courts below and, as appears from the decisions, were fully and carefully considered by them, but found to be wanting as a basis for permitting the carrier to lessen liability below \$500 a package.

The British Courts and text-writers have no doubts as to the elimination of a carrier's right to lessen liability under the *Hague Rules*. Mr. Justice (now Lord) Wright in the case of *Gosse Millard v. Canadian Government Merchant Marine, Limited* (1927) 2 K. B. 432, 434, said:

"These Rules, which now have statutory force, have radically changed the legal status of sea carriers under bills of lading. According to the previous law, shipowners were generally common carriers, or liable to the obligations of common carriers, *but they were entitled to the utmost freedom to restrict and limit their liabilities*, which they did by elaborate and mostly illegible exceptions and conditions. Under the Act and the Rules, which *cannot be varied* in favour of the carrier by any bill of lading, *their liabilities are precisely determined*, and so also are their rights and immunities. * * * " (Italics supplied).

His decision was affirmed by the House of Lords [(1929) A. C. 223], where Viscount Sumner said (p. 236):

“* * * The *intention* of this legislation in dealing with the liability of a shipowner as a carrier of goods by sea undoubtedly was to *replace a conventional contract*, in which it was constantly attempted often with much success, to relieve the carrier from every kind of liability, *by a legislative bargain*, * * *” (Italics supplied).

Additional cases are *W. Angliss and Company (Australia) Proprietary, Limited v. Peninsular and Oriental Steam Navigation Company* (1927) 2 K. B. 456, 460, 461, where the Court said a carrier's freedom to vary or limit its liabilities by contract was destroyed under the Act, and *Vita Food Products, Incorporated v. Unus Shipping Company, Limited* (1939) A. C. 277, 287, 288, in the course of which the Court said:

“* * * Art. III (8) *avoids any clause or agreement relieving the carrier from the liability for negligence imposed by the rules or lessening that liability* * * *” (Italics supplied).

British text-writers are unanimous in their view. Mr. Sanford D. Cole in the Third Edition of his work “*The Hague Rules Explained, Being the Carriage of Goods by Sea Act, 1924*” makes the following pointed statement at page 109:

“Under the above Art. IV 5 of the Rules, *a loophole existing in the Harter Act* and similar legislation (with the exception probably of the Canadian Act) *will be closed*. The Rules in effect embody a suggested amendment of the Harter Act which has been the subject of discussion in American shipping circles. The object of this amendment would be to negative decisions of the American courts that, notwithstanding the provision in the Harter Act de-

claring it illegal for shipowners to contract out of liability, it is nevertheless lawful for the parties to agree upon a value for the goods, by which means shipowners effectively limit their liability for losses to cargo. *Under the Rules a reduced limit cannot be agreed, as the amount named as a maximum (subject to increase by agreement) is declared also to be a minimum limit*" (Italics supplied).

See also Temperley's "*Carriage of Goods by Sea Act, 1924*", 3rd Edition, Introduction, page 1, page 80; *Scrutton on Charter Parties and Bills of Lading*, 13th Edition, pages 498, 499.

Petitioner's suggestion that the pro rating provision be considered as part of a valid valuation clause is untenable. Section 4 (5) of the Act has been held to be a limitation of liability clause and not a valuation clause. *Stirnemann v. The San Diego*, 55 F. Supp. 798, Aff'd. 148 F. (2d) 141; *Shackman, et al. v. Cunard White Star, Limited*, 31 F. Supp. 948; *Steel Inventor, supra*. The corresponding section in the *Hague Rules* was so understood. Mr. Hupper, at the Shipping Board hearings in 1922, said (p. 132):

"* * * It seems to me, as it stands, it is not a valuation clause as we understand the term, but a mere limitation * * *" (Italics supplied).

See also *Chicago, M. & St. P. Rwy. Co. v. McCaull Dismore Company, supra*.

POINT III.

The determination of the Circuit Court of Appeals guarantees uniformity of practice among American and foreign carriers.

Petitioners' Point II is likewise completely without merit. By the very terms of the *Carriage of Goods by Sea Act*, no disadvantage can possibly come to American flag

carriers competing with foreign operators. That is so because the Act is applicable to all bills of lading relating to carriage of goods by sea on *any* vessel *to or from* ports of the United States in *foreign* trade. [§ 1 (a), (d), 13.] Thus, whether the goods are carried on an American or foreign flag vessel makes no difference. That act covers in both instances. The Rule laid down by the Circuit Court of Appeals obviously must and will be applied in identical manner and without fear or favor, regardless of nationality.

The argument that with fluctuating rates of exchange, foreign owners may be called upon to pay the equivalent of less than \$500 a package is completely wrong. Section 4 (5) imposes on a carrier, whether American or foreign, the obligation to pay \$500 "or the equivalent of that sum in other currency". Furthermore, the suggestion demonstrates the fallacy of petitioners' position. If a foreign owner could pay for the loss of an entire package in depreciated foreign currency, it could do the same on a pro rata basis if pro rating were valid, and foreign owners would still have the advantage. If the question of fluctuations in exchange is considered, the possibility, however remote, that United States currency would be the cheaper cannot be ruled out, in which event the advantage would be with American carriers.

Although not within the stipulation of facts (R. 16-19), petitioners *after* the matter was argued in the District Court submitted specimen bills of lading of some, but not all, of foreign steamship lines which obviously were intended only to cover transportation of cargoes from United States to foreign ports, and which contained pro rating clauses. They were not part of the record certified to the Circuit Court of Appeals (R. 37) but were handed up by petitioners on the argument before that Court. Certainly, foreign lines would be foolish not to use a form

similar to that adopted by American carriers on shipments bound from the United States. Petitioners, not having submitted a bill of lading clearly intended to cover transportation of goods inbound to the United States, respondents did so, handing to the District Court a Cunard White Star Line bill of lading covering transportation of goods from London to New York (Exhibit 13). It showed that one of the very companies (Cunard White Star), which used a pro rating clause on outbound shipments, omitted it on inbound shipments. It is by no means the only outbound or inbound bill of lading so framed. Many other foreign steamship companies use the same type of bill of lading as Exhibit 13. It is the complete answer to petitioners' argument. Foreign carriers, recognizing the invalidity of any pro rating clause under their own and this country's Carriage of Goods by Sea Acts do not insert it in bills of lading issued in foreign countries because they know the courts would condemn it, but some of them followed the American carriers' practice on bills of lading issued in this country for what it was worth in settling claims with cargo owners not having knowledge of its invalidity.

CONCLUSION.

It having been demonstrated that no principle is involved or issue presented requiring consideration by this Court, and that the determination of the Courts below clearly conforms with the Carriage of Goods by Sea Act, the petition for a writ of certiorari should be denied.

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